

REMARKS

Reconsideration of the application, as amended, is respectfully requested.

The Advisory Action asserts that the references cited in the previous office action teach the invention of claim 1. Claim 1 recites a sterilized aqueous suspension. As to the Auriou reference, the Office acknowledges that Auriou fails to teach explicitly a sterilization process which would produce a sterilized product for the embodiment previously discussed. The Office points out that infant formulas are normally sterilized, but the undersigned has been informed that they are not always sterilized.

The Office points to an example directed to a sterilized and homogenized oil- and water- containing drink in the Goto patent, but extrapolates from the example to conclude that Goto teaches that it is well known in the art to sterilize emulsions having oily and aqueous phases. It is not apparent why it should be assumed that all emulsions should be sterilized based on this one example, especially given the problems with sterilization of emulsions pointed out in the specification. Moreover, Goto says nothing about storing the drink; indeed they say "the resultant drink was drunken in smoothness through the throat." Therefore, Goto's example 13 does not teach one of ordinary skill to sterilize a drink which is to be stored, again particularly in view of the problems noted in the specification for such products. Even less does example 13 teach the subject matter of new claim 12.

The composition of present example 1 includes monoglyceride, protein, fat, and phytosterol ester. These ingredients are also present in claim 1. In example 1, carrageenan is also present and the protein/fat is present in the form of semi skimmed

millk. It would seem that example 1 is representative of the subject matter of claim 1, so it is requested that the Office reconsider applicants' unexpected results. It should not be necessary in order to take advantage of unexpected results to claim exactly the formulation which produced the results.

In the Advisory Action, the Office complains that the claims do not recite lack of gelation. Although it is not agreed that unexpected results need to be explicitly recited in the claims, new claim 12 recites results disclosed in example 1.

New claim 11 recites thickeners as disclosed in paragraph [0054] of the specification, and, for clarity, claim 7, is canceled and re-presented as new claim 13.

In view of the foregoing, it is respectfully requested that the application, as amended, be allowed.

Respectfully submitted,



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